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May 22, 2023

VIA ECF

The Honorable Ona T. Wang
United States District Court
Southern District of New York
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St. Room 20D
New York, NY 10007-1312
(212)-805-0260

Re: *Garmashov v. United States Parachute Association, Inc.*
Case no.: 1:21-cv-04917-JGK-OTW

Dear Judge Wang:

We write in response to Mr. Kaufman's letter of May 17, 2023. (Doc. No. 80.) Mr. Kaufman states that during the May 3 status conference with Your Honor, "the Court orally converted" Plaintiff's motion for contempt (Doc. No. 69) "to a Motion for Costs and Attorney's Fees." (*Id.*) We disagree to the extent that Mr. Kaufman is suggesting that Plaintiff's contempt motion was converted to a new motion that is subject to different legal requirements or proof. During the May 3 status conference, Mr. Kaufman stated, "We haven't released these bad faith claims or attorney's fees claims - - however the Court wishes to categorize it, just for clarification." (Hearing Tr. 34:2-5.) Thus, Plaintiff's contempt motion remains unchanged and is the only motion pending before this Court.

Obviously, if Plaintiff's contempt motion was converted to a new motion that is subject to different legal requirements, USPA has a basic due process right to know what the new legal requirements are, what proof Plaintiff is presenting in support of the new motion, and USPA has a right to respond to the new motion. However, based on Mr. Kaufman's representations to the Court during the May 3 status conference, Plaintiff is not withdrawing his contempt motion and that is the only motion pending for the Court to decide. As both parties represented during the May 3 status conference, Plaintiff's contempt motion is fully briefed. (Hearing Tr. 32:19-23.)

Finally, USPA objects to Plaintiff's request that "the Court review Defendant's counsel's time records from the end of November 2022 up to the date that Plaintiff's counsel produced in his affidavit of costs and attorney's fees, and that the Court input those hours as represented by Defense counsel's November – February records at Plaintiff's hourly rate and include them in

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Honorable Ona T. Wang
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addition to Plaintiff's affidavit." (Doc. No. 80.) It is Plaintiff's burden to submit proof of the costs/fees that it seeks in support of his contempt motion. Plaintiff's contempt motion is fully briefed, as Plaintiff's counsel represented to the Court during the May 3 status conference. Moreover, Plaintiff cites no legal authority, nor are we aware of any, that would support Plaintiff's belated effort to satisfy its obligation to prove the costs/fees that are the subject of Plaintiff's contempt motion by forcing another party to submit its costs/fees. By definition, USPA's costs/fees are not the same as Plaintiff's costs/fees, and Plaintiff's contempt motion does not argue otherwise.

It was Plaintiff's decision to not attach any proof of costs/fees to his initial contempt motion, and it was Plaintiff's decision to belatedly file an affidavit from his counsel attaching invoices that pertain solely to costs/fees related to Plaintiff's contempt motion. Plaintiff's failure to prove any fees/costs in support of his contempt motion (i.e. any fees/costs Plaintiff incurred before USPA requested the Magistrate's assistance in executing the settlement agreement) is fatal to Plaintiff's contempt motion.

We thank the Court for its attention to this matter.

Respectfully Submitted,

/s/ Kenneth A. McLellan

Kenneth A. McLellan

Enclosure:

Redacted Transcript of May 3, 2023 Status Conference Hearing

cc: **VIA ECF**

Mr. Eric M. Underriner, Esq.

Mr. Alex B Kaufman, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----:

YURI GARMASHOV, : Case No.: 21-cv-4917

Plaintiff, :

v. :

UNITED STATES PARACHUTE :

ASSOCIATION, INC., : New York, New York

Defendant. : May 3, 2023

-----:

TRANSCRIPT OF STATUS CONFERENCE HEARING

BEFORE THE HONORABLE ONA T. WANG

UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: CHALMERS, ADAMS, BACKER & KAUFMAN
BY: Alex B. Kaufman, Esq.
11770 Haynes Bridge Road
Alpharetta, Georgia 30009

For Defendant: WINGET SPADAFORA & SCHWARZBERG LLP
BY: Kenneth A. McLellan, Esq.
Keith Roussel, Esq.
45 Broadway - 32nd Floor
New York, New York 10006

ALSTON & BIRD, LLP
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90 Park Avenue
New York, New York 10016

Proceedings recorded by electronic sound recording;
Transcript produced by transcription service.

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PROCEEDINGS

1 THE DEPUTY CLERK: This is 21-cv-491;
2 Garmashov versus United States Parachute
3 Association, Inc.

4 Counsel, please state your appearances
5 for the record.

6 MR. KAUFMAN: Good afternoon, Your Honor.
7 My name is Alex Kaufman, on behalf of Mr. Garmashov.

8 THE COURT: Good afternoon.

9 MR. McLELLAN: Good afternoon, Your
10 Honor. My name is Kenneth A. McLellan. I'm with
11 Winget Spadafora & Schwartzberg, representing United
12 States Parachute Association, Inc.

13 MR. ROUSSEL: Good afternoon, Your Honor.
14 My name is Keith Roussel. I'm from the law firm of
15 Winget Spadafora & Schwartzberg, also here on behalf
16 of the United States Parachute Association Corp.

17 THE COURT: Okay.

18 MR. CAMPBELL: Good afternoon, Your
19 Honor. Steven Campbell from the law firm Alston &
20 Bird, here on behalf of USPA. This is our client,
21 Your Honor.

22 THE COURT: Okay. Would you like to
23 introduce your client? Or you can introduce
24 yourself.

25 MR. BERCHTOLD: How are you doing?

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1 Albert Berchtold on behalf of the United States
2 Parachute Association.

3 THE COURT: Okay. Oh, so you're -- we
4 spoke on the phone, right, in some of the
5 pre-settlement calls? Was that with you?

6 MR. BERCHTOLD: Yes, that was with me,
7 Your Honor.

8 THE COURT: Okay. All right. No, no,
9 no. It's okay. We're here for a status conference.
10 We are on the record, and I envision at the end of
11 this conference asking you all to get a copy of the
12 transcript and share the cost 50/50. I'm going to
13 put that right out there. If we end up talking
14 about confidential settlement issues, I would expect
15 you to make a joint motion to seal the transcript,
16 but I do want a full and complete transcript here
17 because of the considerable acrimony in the history
18 of this case.

19 All right. Bring me up to speed. I
20 thought that Judge Koeltl had decided the motion to
21 enforce the settlement and we were done. Does
22 somebody want to talk to me? I guess we'll start
23 with Mr. Kaufman if somebody wants to talk to me
24 about what's happened since then.

25 MR. KAUFMAN: Well, Your Honor, our

PROCEEDINGS

1 position is that you're spot on. The motion to
2 enforce was ordered on November 29, 2022. Payment
3 has yet to be made. The judge was clear. The
4 settlement terms were clear and unambiguous. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 We pre-signed a mutual dismissal with
9 prejudice, provided wiring instructions. Obviously,
10 there's nothing else in the order. Surely, the
11 judge then ordered us to then go ahead and come up
12 with a settlement agreement. We did prepare what we
13 thought was just those clear terms. It just never
14 happened. We attempted to placate defendant's
15 counsel who wanted a more robust settlement
16 agreement. Their initial draft to us included terms
17 that were far outside of what -- the clear
18 parameters of the enforcery. Our view is an
19 agreement was made. The judge affirmed that that
20 agreement was made.

21 And I think it's important to note, Your
22 Honor, that initial agreement from the mediation was
23 from May 12, 2022, you know, so we're here a year
24 later. Our view is that the attempts to get us a
25 settlement agreement that both parties were

PROCEEDINGS

1 comfortable with was something that was unnecessary.
2 But if that's what they wanted to be attempted
3 (indiscernible) to do that. Such things that were
4 put in their drafts included California releases.
5 We're here, obviously, under the laws of the State
6 of New York. They attempted to require Mr.
7 Garmashov to have the document notarized as a
8 precondition. That was impossible for Mr.
9 Garmashov. He's in a city in Russia that is 16
10 hours or so drive to Moscow. There's reasons for
11 him not to go to Moscow right now, as the Court is
12 undoubtedly aware.

13 Additionally, if he did have to get
14 notarized -- of course, not a precondition, nor any
15 term that's in the order that Judge Koeltl
16 codified -- it would require him to have had the
17 entire agreement translated by a certified
18 translator into English and at considerable time and
19 expense. Again, unnecessary parameters.

20 There were parameters put forth in some
21 of their drafts that included joint motions to have
22 the agreement sealed, as Judge Koeltl had released
23 the settlement terms. Again, additional
24 requirements.

25 And, you know, basically, if you just

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1 took from that November date of Judge Koeltl's
2 order -- I believe it was November 29th -- and ran
3 the interest plus the additional attorney's fees and
4 costs that we had to incur on behalf of
5 Mr. Garmashov, which to date are \$27,807.59. Our
6 view is this was clear and unnecessary. You know,
7 defense counsel's claims, oh, you know, we reached a
8 deal with (indiscernible) is just not true.

9 While that agreement contained most of
10 the terms, one of the issues, of course, was now
11 that Mr. Garmashov had incurred significant cost and
12 was deprived of the use of that money, and has been
13 living off credit cards and incurred additional
14 expenses, as I mentioned, attorney's fees and costs
15 of travel. I am barred in New York, but I reside in
16 Atlanta. We -- you know, that interest rate, Your
17 Honor, is \$19.85 a day, at least based upon the
18 calculations put forth in my April attorney's fees
19 affidavit.

20 Even if we did reach an agreement in
21 February, which we don't consider that we did, you
22 know, there's a provision in that last agreement,
23 again, requiring a California release, which, as the
24 Court knows, is different than a general release
25 here in the state of New York. I'm not barred in

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1 California. We'd have to get additional counsel so
2 he can review that. Again, it's not part of the
3 original initial settlement terms, and that
4 provision not agreeable to Mr. Garmashov.

5 The result is he's been deprived, really,
6 for a year of that money. And -- but our
7 calculations were from the order date. And we
8 believe that defense counsel could have done many
9 things. If there was such a dispute, you could ask
10 the Court for a clarification of what the word
11 "execute" means, which is what Judge Koeltl told you
12 you could execute. The word "execute" means to go
13 forth and do it, which is -- again, the court found
14 there was an agreement. There was no order to agree
15 to a more robust writing, which, of course, is
16 something that I believe -- I'm not in a position to
17 tell district judges what they can and can't do, but
18 I don't believe that's something that would have
19 been in his purview or his intent.

20 They could have put the money in the
21 registry of the court to mitigate this. They could
22 have put it in our trust account it's subject to.
23 They didn't do that. And so the idea that they have
24 tried to comply with the letter or spirit with the
25 order sounds falsely. And the reality is,

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1 Mr. Garmashov has now come to New York twice. Of
2 course, we canceled last time at the last moment,
3 and I know that they traveled as well. But, again,
4 those costs were incurred by Mr. Garmashov. And,
5 you know, he -- unfortunately, that's the position
6 he's in. And we're here to try to get recompense
7 for that additional 20 -- almost \$28,000 in
8 additional costs and damages that he's incurred
9 since the day of the order.

10 So that's why we're here. We've
11 attempted to -- we've made offers. I'm not getting
12 into settlement conversations, but I can tell you
13 that the -- there was no counter involved of any
14 substance. And, you know, their position was wait
15 and see what Your Honor would do. We find that
16 unfortunate. There were offers, well, we'll pay the
17 money, but we'll have to deal with this.

18 I felt uncomfortable, given the
19 relationship and the history of signing anything
20 that had a mutual general release, even with a
21 carve-out to have this issue heard. Again, the
22 first time that was offered was February 22nd. And
23 I believe, frankly, that's just too little too late.

24 Again, they could have sent the money to
25 (indiscernible) punish Mr. Garmashov for whatever

PROCEEDINGS

1 reasons are out there.

2 I have full settlement authority. If the
3 Court does, you know, order us to come to resolve
4 this, I can contact Mr. Garmashov --

5 THE COURT: Okay.

6 MR. KAUFMAN: (indiscernible).

7 THE COURT: All right. Great. Thank
8 you.

9 So just so I'm clear -- and this is a
10 question for everybody, all the counsel --
11 Judge Koeltl's finding is that the e-mail, the
12 8:35 p.m., May 12, '22 e-mail, is when there is the
13 agreement, and it's just the terms that were agreed
14 to and confirmed in the 8:35 p.m. e-mail; is that
15 right?

16 MR. KAUFMAN: Yes, Your Honor.

17 THE COURT: Okay. What about from
18 defendants?

19 MR. McLELLAN: Well, I believe that's
20 correct, Your Honor. May I respond to Counsel's
21 presentation?

22 THE COURT: I'm not -- briefly. But I
23 would like to say I envision us talking about this
24 in two separate pieces. Number one is I think it's
25 clear Judge Koeltl -- Judge Koeltl's ruling is quite

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1 clear about the motion to enforce the settlement
2 agreement. And the settlement agreement [REDACTED]

3 [REDACTED] [REDACTED]
4 [REDACTED]

5 I think a separate issue is what's
6 happened since November 29, 2022, which I would
7 probably prefer to address after we have an -- after
8 we come to understand why the settlement hasn't been
9 consummated.

10 MR. McLELLAN: I can explain that, Your
11 Honor, if I would have -- could have the
12 opportunity, please.

13 THE COURT: Go ahead.

14 MR. McLELLAN: The order calls for the
15 Magistrate Judge, Your Honor, to supervise the
16 execution of a settlement agreement. The --
17 Judge Koeltl's order calls for the execution of a
18 settlement agreement. You refer to an e-mail, Your
19 Honor, but that doesn't contain the language of a
20 general release. It doesn't contain a signature.
21 And our interpretation of the order is that we were
22 entitled to that.

23 Counsel, in an e-mail that he sent to us
24 right after the order was issued from Judge Koeltl
25 initially said, we'd like you to wire us \$ [REDACTED]

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1 but let us know if you have a different view,
2 showing that there was at least two interpretations
3 of the order possible. That wasn't our
4 interpretation of the order, that Judge Koeltl's
5 order required us to immediately wire \$ [REDACTED] to
6 the order of plaintiff's counsel. We look to have a
7 settlement agreement.

8 Counsel is referring to the California
9 release issue. I don't want to get into that in too
10 much detail, but I would only point out that this is
11 the second lawsuit referable to this incident,
12 meaning the second lawsuit having to do with
13 Mr. Garmashov's membership having been terminated.
14 The first lawsuit was brought in California by
15 Mr. Kaufman's firm at the time. There is some law
16 in California that raised concerns with my
17 principals, and we simply wanted to address that in
18 the release. I'm -- there should be no reason that
19 Counsel should have any concern about that if the
20 intent is for this to be the end of the lawsuit and
21 my clients to be released, which that should be what
22 happens after my client issues payment.

23 The rest of the issues that happened in
24 terms of the settlement agreement were routine
25 issues that happen when you go back and forth with

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1 counsel. There was nothing unusual. But we did
2 come to the point where, unfortunately, Counsel
3 threaten -- began to threaten us and use more
4 threatening language, which is when we wrote a
5 letter to Your Honor on February 7th. And then
6 Your Honor immediately ordered a settlement
7 conference to be held in April, which was
8 subsequently adjourned to today.

9 But the issue is, all of the billing that
10 counsel generated that's attached to his motion to
11 hold my clients in contempt -- which is without
12 merit -- was billing that was incurred after we
13 requested a conference. Counsel didn't need to do
14 that. And, thereafter, we worked diligently. And
15 recently who appeared in the case, Mr. Campbell of
16 Alston & Bird was of great assistance to us. We
17 worked on the settlement agreement.

18 Counsel now says that he disagrees that
19 an agreement has been reached. But I'm here to
20 report to the Court, happily, that it's our
21 understanding -- and we have e-mails to that
22 effect -- that the agreement language that we have
23 come to with Mr. Kaufman mirrors the terms of the
24 order of Judge Koeltl. And I understand that
25 Mr. Garmashov, if he's living on credit cards, if

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1 he's having that type of problem, if he signs this
2 agreement that Mr. Kaufman has already agreed to, he
3 could simply get paid within three days after that.
4 So I'm not sure why he wants to do that, why he
5 needs to live off credit cards.

6 The other issue is the terms that are in
7 the present settlement agreement are innocuous
8 terms, and we feel that Mr. Kaufman -- we understand
9 that he believes the best way to protect his client
10 is to make a motion for contempt. I have to be
11 honest with you, Judge, in 25 years of practice,
12 I've never had somebody make a motion for contempt
13 before in this situation, especially when there's a
14 settled case. And we now have a settlement
15 agreement. It's simply not necessary, Judge. And
16 it's racked up a lot of damages that Counsel didn't
17 need to rack up. He brought a bazooka to kill a
18 fly. It certainly wasn't necessary.

19 And Counsel indicates that there were
20 negotiations. I don't want to get into the detail
21 of the negotiations, but when we were just outside,
22 Counsel's offer was the 100 percent of the amount of
23 the claim damages on contempt. That's not
24 negotiation in my book, Judge.

25 Thank you for listening. And I wanted to

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1 note that -- if I may, Mr. Campbell may have
2 something to add. He's recently appeared in the
3 case.

4 THE COURT: Go ahead.

5 MR. CAMPBELL: Thank you, Your Honor.

6 Only one thing I wanted to add is that,
7 prior to the order being issued, the parties
8 understood that if a term -- if the term sheet was
9 agreed to, if there was an agreement reached at the
10 mediation, that there would be a long form
11 settlement agreement memorializing those terms. And
12 we -- this is in the record, but -- so the term
13 sheet, as you pointed out earlier, what Judge Koeltl
14 said were the terms of the agreement -- when
15 plaintiff's counsel, Mr. Kaufman, e-mailed that term
16 sheet to Mr. McLellan, he stated that if you -- if
17 your client signs the term sheet -- now, I quote --
18 "We can move forward and we can render a final draft
19 agreement to you."

20 And then also in the record is an e-mail
21 that Mr. McLellan sent to the mediator stating, "[REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]"

25 I only say that because in interpreting

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1 the order from Judge Koeltl, it was our
2 understanding that both parties wanted to put that
3 agreement into writing. And so it's extremely
4 reasonable that USPA took that view.

5 And, in fact, while plaintiff, you know,
6 reserved the right to object to that approach,
7 plaintiff's counsel did engage in negotiating a
8 settlement agreement. And so that's what the
9 parties endeavored to do. They were unable to, for
10 a couple of months, get there, but then by February
11 22nd, they did reach an agreement, which, as Mr.
12 McLellan stated, plaintiff's counsel said mirrors
13 Judge Koeltl's order.

14 So we have a settlement agreement that
15 everyone agrees has the terms that need to be in
16 there, nothing more, nothing less. And as soon as
17 that's signed, USPA will pay within three days.

18 THE COURT: Now, what I heard from
19 Mr. Kaufman -- and he's shaking his head right
20 now -- is that the February 22nd -- the February
21 settlement agreement may mirror the terms of the
22 term sheet, but it adds certain things, certain
23 requirements that are unacceptable and that were not
24 on the term sheet, right?

25 MR. CAMPBELL: No. Well, that's -- I

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1 disagree, Your Honor. The --

2 THE COURT: Do you want to -- does
3 somebody want to hand up the draft February
4 settlement agreement and the term sheet? If you
5 have an unmarked --

6 MR. McLELLAN: I have the confidential
7 agreement that in my -- according to me and
8 according to e-mail correspondence we had with
9 Mr. Kaufman, this is -- right, what I have right
10 here is what mirrors the terms of Judge Koeltl's
11 agreement. I'll be happy to hand it up. I don't
12 know if it's a court officer here or --

13 THE COURT: My law clerk can take it.

14 MR. McLELLAN: May I approach or -- I
15 don't want to --

16 THE COURT: Yes.

17 MR. CAMPBELL: Your Honor, if I may just
18 add that -- so we sent this new agreement. That's
19 when I came into the case. I took a look at it, and
20 I said, you know, let's just start from scratch. I
21 took Judge Koeltl's order in one hand.

22 THE COURT: When did you come into the
23 case again?

24 MR. CAMPBELL: Right. So it was after --
25 I don't remember the exact date. I didn't make an

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1 appearance in the case until much later, about a
2 month after, I think, but it was after the motion
3 for contempt had been filed. It was about a week
4 before, I think -- a few days before I sent the new
5 agreement, and that was February 20th.

6 THE COURT: So this is -- what I'm
7 holding in my hand right now that Mr. McLellan has
8 handed up is what you're all talking about as the
9 February agreement?

10 MR. KAUFMAN: Yes.

11 MR. CAMPBELL: Yes.

12 THE COURT: Okay.

13 MR. McLELLAN: That's the February 22nd
14 agreement, Judge.

15 THE COURT: Okay.

16 MR. CAMPBELL: We sent that on
17 February 20th, and then plaintiff's counsel came
18 back --

19 THE COURT: I don't -- I'm not into --
20 I'm going to cut with a very -- I'm not even going
21 to call it a knife. I'm going to cut with a machete
22 right now, okay, because this case needs to be over.
23 You all need to go your separate ways, and you need
24 to move on, and you need to do this, and
25 Mr. Garmashov needs to get his money, all right.

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1 So I'm seeing this settlement and
2 release. And, Mr. Kaufman, you're saying that while
3 the -- let me paraphrase in words that may be more
4 acceptable to defendants.

5 You're saying that the February 22nd
6 agreement contains the terms from the term sheet,
7 but it also adds additional terms. And those added
8 additional terms or requirements are what are
9 unacceptable.

10 MR. KAUFMAN: Yes, Your Honor. You're
11 spot on.

12 THE COURT: Okay.

13 MR. KAUFMAN: The California -- the
14 language is in that version, and it still hasn't
15 addressed -- it reserves the right for us to have
16 this contempt issue, which the idea that we only
17 incurred attorney's fees starting after -- with the
18 filing is just inaccurate. The Court's got the
19 record of the billing in the record.

20 THE COURT: All right. What's -- does
21 somebody have a copy of the term sheet they can hand
22 up?

23 MR. KAUFMAN: Yes, Your Honor. I have it
24 digitally from the court -- I have the court's
25 actual order, if that would please the Court.

PROCEEDINGS

1 THE COURT: Wait, but that -- does that
2 have the term sheet in it?

3 MR. KAUFMAN: I thought you were
4 suggesting the -- what I e-mailed over, where they
5 agreed in May; May 12th.

6 THE COURT: Yes.

7 MR. KAUFMAN: It's attached -- he --
8 Judge Koeltl puts it directly in his order.

9 THE COURT: Oh, okay. Where is it in the
10 order?

11 Does anybody have a copy of the term
12 sheet?

13 MR. KAUFMAN: (indiscernible).

14 THE COURT: Oh, that's that block quote
15 at the top of [REDACTED]?

16 MR. KAUFMAN: Yes, Your Honor. That's
17 right out of the e-mail, and then we signed it.

18 MR. CAMPBELL: I have a marked-up
19 redacted copy, if you want to see the actual --

20 THE COURT: Yeah, I'd like to see an
21 actual unredacted...

22 MR. CAMPBELL: I think this is -- this is
23 it, right?

24 MR. McLELLAN: Yes, that's --

25 MR. CAMPBELL: My apologies for the

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1 highlighting.

2 THE COURT: Okay. That's okay.

3 Okay, let me see. Well, the highlighting
4 or the --

5 MR. CAMPBELL: This was -- this is what's
6 in the -- sorry, Your Honor. This is what was in
7 the record. This is --

8 THE COURT: The redaction, yeah. No,
9 that's my problem. So we don't have -- nobody has
10 an unredacted --

11 MR. KAUFMAN: Your Honor, if I can pull
12 my e-mail for a second, I'll be able to --

13 THE COURT: Okay. Yeah.

14 MR. KAUFMAN: (indiscernible).

15 THE COURT: Okay. Here, you can have
16 this back.

17 And so what will happen after you get a
18 copy of the transcript is that the transcript will
19 be available to you all for redaction, and then
20 you're going to redact maybe -- probably the
21 numerical amounts, or we'll redact certain sections.
22 You're going to agree on a section to redact, okay,
23 before it gets filed on the docket, or we may end
24 up -- depending on what this transcript looks like,
25 we may just end up sealing the entire transcript.

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1 MR. KAUFMAN: Your Honor, I apologize.
2 It looks like my firm only lets my e-mail go back to
3 November of 2022 (indiscernible).

4 THE COURT: Oh, dear.

5 MR. KAUFMAN: But we -- it is quoted.
6 Like I said, it is quoted in there. And those are
7 the only terms there, and then Mr. Garmashov signed
8 it. We can send it over. But I think the Court
9 accurately describes the -- and I can probably find
10 the -- if I go into the PACER, I can find it as an
11 attached exhibit for our motion to enforce.

12 THE COURT: Okay. All right. So when
13 the USPA's offer went up to -- redacted --
14 membership was removed from the equation.
15 "Plaintiff's counsel then took the stance that only
16 a higher offer would be considered. We and the USPA
17 rightfully consider that as an abandonment of the
18 request for membership."

19 Oh, I see. So the -- wait. So the case
20 would settle for [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 but this is -- is this -- this order is unredacted,
25 right? So --

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1 MR. KAUFMAN: Yes, correct, it's -- to
2 the world at this point, which was also our view of
3 why it seemed -- and, of course, it means the
4 general releases would be the same thing as mutual
5 dismissal with prejudice, which is what we produced
6 and signed and gave to counsel immediately to hold
7 until we got the money wired.

8 THE COURT: Right. So that -- that set
9 of terms -- "[REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]" -- those are the terms on the term sheet.

15 MR. KAUFMAN: That was it. It was just
16 four bullet points, Your Honor, and our client
17 signed it, and it was signed "mediation settlement
18 agreement."

19 THE COURT: Okay. And that's what was
20 handed up that -- where all the bullet points were
21 redacted?

22 MR. KAUFMAN: Yeah. That's why I said
23 the Court properly listed it. They said we had an
24 agreement in principle. That was it. But at this
25 point, it's -- you know, I can't do anything about

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1 [REDACTED] [REDACTED],
2 again -- I'm going to take out your new microphone,
3 Your Honor.

4 [REDACTED]
5 [REDACTED] So our view is very simple --
6 and we provided the wiring instructions. So wire
7 the money. [REDACTED]

8 [REDACTED] We're done.

9 THE COURT: Okay.

10 All right. Mr. McLellan?

11 MR. McLELLAN: Yes, Your Honor.

12 THE COURT: Yeah, what did you want to
13 say?

14 MR. McLELLAN: I just wanted to add --
15 Counsel did refer, unfortunately, to the dollar
16 amount of the settlement in his motion to enforce
17 the settlement, so that cat got out of the bag. But
18 we still would like to have confidentiality in our
19 agreement. And it is in this --

20 THE COURT: [REDACTED]
21 [REDACTED], and there was no
22 timely motion made to seal for that?

23 MR. McLELLAN: Your Honor, I don't think
24 counsel has any objection to there being
25 confidentiality.

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1 THE COURT: No, I don't think so either,
2 but I -- it's a little bit -- it's a -- the horse is
3 gone. The barn door is wide open. It has been wide
4 open since last November.

5 MR. McLELLAN: I understand --

6 THE COURT: What's your point? And by
7 the way, Judge Koeltl would probably not be willing
8 to redact his order. So regardless of
9 confidentiality at this point going forward, sure,
10 you can agree to confidentiality, [REDACTED]
11 [REDACTED].

12 MR. McLELLAN: Judge, I understand that.
13 We are not disputing that issue any longer.

14 THE COURT: Okay.

15 MR. McLELLAN: We understand that it --
16 that the dollar amount was listed in the order, and
17 we're not -- we don't want to go back and revisit
18 that. We want to go forward.

19 The only issue is, is that we did want to
20 point out, in -- although this case is pending in
21 New York, there is an action brought under
22 California law in the complaint. It's in Count 4.
23 It's violation of California Business and
24 Professional Code § 17200, which is what raised
25 concerns on my client's side.

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1 THE COURT: Okay. Sit down, please.

2 Mr. Kaufman, tell me about the California
3 case. That's another case where your client's a
4 plaintiff?

5 MR. KAUFMAN: Well, Your Honor, we
6 originally filed the action in California. We
7 dismissed it and decided to bring it here for
8 logistical reasons. Mostly -- mainly because I'm
9 barred here and I switched --

10 THE COURT: Okay. So why are we talking
11 about a California case? Why are we talking about
12 California law? Why do we care?

13 MR. McLELLAN: Judge?

14 THE COURT: Yeah, go ahead.

15 MR. McLELLAN: It's just -- no. What I'm
16 referring to is the California statute that is
17 raised in this case that's in New York. That's
18 this -- what I just read to you is Count 4 of the
19 complaint in this court, which is referable to the
20 California Business and Professional Code § 17200,
21 which, again, is what raised concerns on my --

22 THE COURT: If you're dismissing this
23 case with prejudice, why does it matter?

24 MR. McLELLAN: That would be the question
25 I'd pose to Mr. Kaufman, why does he care --

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1 THE COURT: And why does it -- why is it
2 in here? I have a mind -- here's a couple things; I
3 have a mind to just oversee you all signing -- and
4 Mr. Kaufman can sign on behalf of his client. We
5 can get his client on the phone, as I understand,
6 ensure verbally that he has full authority to sign
7 on his behalf, and we can read the agreement to him.
8 But we can do this two ways, I propose.

9 One is we can take a clean copy of
10 [REDACTED], bracket the language right there. You all
11 sign it. That's your settlement agreement. Or we
12 can take those terms, type it up into four bullets
13 again, and you all sign it again. What do you want
14 to do?

15 MR. McLELLAN: Your Honor, may I confer
16 with my client and co-counsel on this?

17 THE COURT: Sure.

18 MR. McLELLAN: May we --

19 THE COURT: Yeah. You know what? Let's
20 take a break. You can go into the jury room, have a
21 conversation, and then just come out when you're
22 ready; okay?

23 MR. McLELLAN: Thank you, Judge.

24 (A recess was taken.)

25 THE COURT: All right.

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1 MR. McLELLAN: Thank you, Your Honor, for
2 the opportunity to confer. I've spoken with our --
3 my client. He's willing to execute [REDACTED]
4 [REDACTED] settlement
5 agreement. And then he is willing to, when he
6 returns to his office, which is in the Washington,
7 D.C. area -- tomorrow he will be back in his office.
8 He can issue a check to Yuri Garmashov, which will
9 be overnighted to Mr. Kaufman's office.

10 THE COURT: Any thoughts, Mr. Kaufman?

11 MR. KAUFMAN: I'm fine with that, Your
12 Honor. That's all we wanted. I do, obviously, want
13 to address the contempt issue, the additional
14 damages Mr. Garmashov incurred for such a simple
15 solution.

16 THE COURT: Okay.

17 MR. KAUFMAN: But we have no problem. I
18 have authority. I just texted him.

19 THE COURT: Okay. Why don't we do this,
20 why don't we print a clean copy of [REDACTED] because I
21 wrote on the one that I have, unless one of you has
22 a clean copy. And why don't we just have you all
23 sign, including Mr. Kaufman, even though I
24 understand that Mr. Garmashov had already signed the
25 previous term sheet. We'll just have you all sign

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1 on the same document.

2 MR. KAUFMAN: No problem.

3 THE COURT: Is that all right? Okay.

4 Does defense counsel have any issue at
5 all about whether Mr. Kaufman has the authority to
6 sign on behalf of his client?

7 MR. CAMPBELL: If he represents that he
8 does, then we --

9 THE COURT: Okay. All right. So just so
10 we're all clear, [REDACTED]

11 [REDACTED], right,
12 that starts with, that the only terms delineated in
13 the draft were that, quote. And it goes through to
14 the closed quote, right?

15 MR. KAUFMAN: Yes, Your Honor. And just
16 for reference in the record, [REDACTED] at
17 [REDACTED], which is our motion to enforce, had
18 the -- it was titled "Mediation Settlement Agreement
19 Terms and Conditions." That's where Judge Koeltl
20 took those verbatim. It's just redacted in the
21 public forum because we were trying to abide by our
22 end of the confidentiality that it needed the Court,
23 of course (indiscernible) --

24 THE COURT: He just decided that he would
25 put them in the order.

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1 MR. KAUFMAN: Yes.

2 THE COURT: Okay. Let me just check to
3 see if there's an unredacted version of that visible
4 to court users.

5 So how did you do this when you made the
6 motion before Judge Koeltl; did you send unredacted
7 hard copies to him?

8 MR. KAUFMAN: I believe that's what we
9 did because we tried to --

10 THE COURT: Okay.

11 MR. KAUFMAN: Or we maybe e-mailed his
12 staff attorney, Your Honor.

13 THE COURT: Okay.

14 MR. KAUFMAN: I'm not at the same firm as
15 what we did at the time, so --

16 THE COURT: Okay.

17 MR. KAUFMAN: -- I don't have records.
18 And I don't have that file because that firm got hit
19 with a cyber attack, so we're -- that's the
20 situation.

21 THE COURT: All right.

22 MR. KAUFMAN: (indiscernible).

23 THE COURT: All right. So we'll go
24 forward with this somewhat unorthodox view. So I
25 guess I'll mark the section in red ink and point

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1 that out as the settlement, okay. This will become
2 the settlement agreement.

3 All right. So we're going to hand that
4 down, and I suppose you can each sign it.

5 MR. KAUFMAN: Okay, Your Honor. And for
6 the record, I'm signing now on behalf of
7 Mr. Garmashov, with authority as his attorney, as
8 well as I'll sign it in my capacity as well as
9 counsel of record. And I'm going to sign it with
10 blue ink.

11 THE COURT: All right. Thank you.

12 MR. KAUFMAN: Your Honor, may I hand it
13 over to opposing counsel?

14 THE COURT: Please do.

15 MR. McLELLAN: Thank you, Counsel.

16 May I present this to my client for a
17 signature?

18 THE COURT: Please do.

19 MR. McLELLAN: I have a black-ink pen for
20 Mr. Albert Berchtold, the executive director of the
21 United States Parachute Association, to sign.

22 THE COURT: All right. Thank you.

23 And please print your names under each of
24 your signatures if you haven't done so already.

25 MR. McLELLAN: Your Honor, before the --

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1 excuse me. Before the Court, I'm signing my name as
2 counsel at page 3 in black ink at this time.

3 THE COURT: Okay.

4 MR. McLELLAN: I finished signing it,
5 Your Honor.

6 THE COURT: All right. Thank you.

7 All right. My law clerk is going to just
8 take it so I can just take a look at it, and then --
9 actually, just the page -- since the opinion order
10 is multiple pages, [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED].

14 And then we'll either -- we can print out black and
15 white copies for you, and we can also e-mail you the
16 color copy; okay?

17 MR. KAUFMAN: Thank you.

18 MR. McLELLAN: Thank you, Judge.

19 THE COURT: All right. Hold on just
20 while we get that done.

21 (Pause in proceedings.)

22 THE COURT: All right. Just a minute
23 while we wait on this.

24 All right. So my law clerk is going to
25 take the agreement, [REDACTED]. We'll

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1 e-mail copies to you. We'll bring you hard copies
2 that are black and white, okay, so you each will
3 have a copy to take with you.

4 Just a minute.

5 MR. KAUFMAN: Your Honor, just as a
6 housekeeping matter, since I've switched firms, may
7 I put on the record I'm handing my accurate mailing
8 address via business card to counsel and his client?

9 THE COURT: This is the one that's
10 attached here?

11 MR. KAUFMAN: Yes, Your Honor, that's
12 correct.

13 THE COURT: This is new firm? Okay.

14 MR. KAUFMAN: Chalmers, Adams, Backer &
15 Kaufman.

16 THE COURT: Okay. Yeah.

17 MR. KAUFMAN: Thank you.

18 MR. McLELLAN: Thank you.

19 THE COURT: All right. On to -- the
20 motion for contempt is -- it's fully briefed, right?
21 It's been fully briefed?

22 MR. KAUFMAN: Yes, Your Honor.

23 MR. McLELLAN: Yes, Your Honor.

24 THE COURT: All right. The Court could
25 construe that -- we're not going to decide it now,

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1 okay, but I do want to reach -- try to reach some
2 kind of closure on that since we do now have a
3 signed settlement agreement.

4 Is -- we could construe it as a motion
5 for attorney's fees. Is there -- or is there
6 another -- you know, we could invite plaintiff to
7 withdraw it. I could see potentially some reasons
8 why they might be resistant, but -- you know, or is
9 there briefing or supplemental briefing you might
10 want to have -- if we were to construe it as a
11 motion for attorney's fees, is there any
12 supplemental briefing you might want to have in
13 light of the fact that we now have a signed
14 settlement agreement?

15 MR. KAUFMAN: Your Honor, from the
16 plaintiff's perspective, we don't wish to withdraw
17 that motion. You know, we've incurred about \$28,000
18 in attorney's fees. The only additional briefing,
19 which would have been an updated affidavit based
20 upon once I return home and what that total time and
21 bill would be. I'm happy to stand in my place for
22 the Court to give a -- you know, an estimate of what
23 I believe it is on both sides so that we can proceed
24 as of now. Otherwise it's fully briefed. And my
25 preference is for -- you know, one is that -- just a

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1 clear understanding that, yes, we've now signed the
2 settlement agreement. We haven't released these bad
3 faith claims or contempt claims or attorney's fees
4 claims -- however the Court wishes to categorize it,
5 just for clarification. And my hope would be to
6 minimize any further cost and exposure and expense
7 for Mr. Garmashov so he can move on with his life.

8 So we don't believe we need any
9 additional briefing. If the Court would want an
10 updated affidavit, I can -- of course, the math
11 is -- math is we put in the interest rate, although
12 I heard the Feds raised it a quarter of a point
13 today, but I don't want to go back to it.

14 THE COURT: We're not going to go there.
15 Look, I will tell you -- so you had incurred -- your
16 client had incurred about 28,000 in fees and costs
17 since -- up to when? What's the date range that
18 that covers?

19 MR. KAUFMAN: Your Honor, that covers and
20 has been in the accurate form since Judge Koeltl's
21 order on November -- I believe it was the 29th,
22 2022, up to and through today.

23 THE COURT: Through today, the 28,000?

24 MR. KAUFMAN: Well, the 28,000, exactly,
25 that's through today. My affidavit was, I believe,

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1 4 or \$5,000 less, but, of course, I -- we've had to
2 incur airfare to come here, brief preparing, and
3 then being here in court.

4 THE COURT: Okay. Okay.

5 MR. KAUFMAN: (indiscernible). And the
6 additional month of the interest, which is about
7 \$600 or so.

8 THE COURT: Okay. All right. Go ahead,
9 Mr. McLellan.

10 MR. McLELLAN: Thank you, Your Honor. I
11 appreciate the opportunity to be heard, and I
12 appreciate your assistance with the settlement
13 agreement today.

14 The billing I have from counsel begins on
15 February 8, 2023, for the drafting of the motion for
16 contempt. I don't have billing from earlier than
17 that for Counsel. With respect, I understand
18 Counsel is from Atlanta, but he brought the case in
19 New York, and there were adjournments that were
20 beyond our control. We don't believe that our
21 client should be charged for that.

22 And if I could, since Counsel did have
23 the opportunity to submit an affidavit, I would like
24 the opportunity to submit a brief response to that
25 along those lines if counsel is not going to

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1 withdraw it. I certainly don't want to burden the
2 Court, Mr. Garmashov or my own client, for that
3 matter, but if the motion is going to be heard,
4 short brief, and that could be done by next Friday.

5 THE COURT: Okay. I anticipate this
6 being on the papers. I really don't want any of
7 you -- now that we have a signed settlement
8 agreement, I would really prefer that we all be able
9 to move on from this case.

10 And although I don't think it has been
11 referred to me, but -- oh, maybe it has. I was just
12 looking at the docket header, and my initials are
13 right after Judge Koeltl's, which suggests that it's
14 already been referred, but I would construe it as a
15 motion for attorney's fees.

16 I -- here's what I would suggest, why
17 don't we give it a week for everything to cool down,
18 for money to come in -- (indiscernible due to audio
19 skipping) on the motion for attorney's fees.

20 I think you all have been able to detect
21 by the words I have said and the tone I have used
22 that I would prefer not to have to address it, but I
23 will address it, if need be.

24 The other question I had is, is the
25 February agreement part of the briefing right now?

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1 Mr. Kaufman, you're shaking your head.

2 MR. KAUFMAN: As part of the brief --
3 yes. And just one point of clarification --

4 THE COURT: It's in the briefing. Okay.

5 MR. KAUFMAN: And it's in -- and that's
6 part of what the attorney's fees are going back and
7 forth. And Mr. McLellan Makes an excellent point.
8 The fees that I can show right now are just since I
9 was at my new firm. The old firm, as I mentioned
10 earlier, had a cyber attack, but we were clearly
11 going back and forth since November. So this is a
12 low estimate of what these attorney's fees numbers
13 are --

14 THE COURT: Okay.

15 MR. KAUFMAN: -- Mr. Garmashov as to what
16 he's received. Unfortunately, my prior firm, Hall
17 Booth Smith, can't -- one of these was attackers
18 there, for the record.

19 THE COURT: That's rough.

20 MR. KAUFMAN: Hence, why they're there.
21 But a point of clarification, I wanted the Court to
22 know, these are on the lower end because they're
23 missing three or four months. And that, of course,
24 is associated working with me here as well as in
25 just my time. And these were iterations back and

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1 forth and calls with counsel and e-mails.

2 Your Honor, in light of your direct words
3 and insinuations, perhaps you could order us to take
4 10, 15 minutes to attempt to negotiate it because we
5 have a resolution and we want to read it on the
6 record and be completely finished, as they have
7 counsel and a party with authority, and I can have
8 Mr. Garmashov available right now.

9 THE COURT: Yeah. You know what, though,
10 I do, unfortunately, have something that is supposed
11 to be starting in two minutes that I have to take in
12 chambers, so -- but what I -- here's what I will do,
13 I will put an outside date for you to write a joint
14 letter in about whether you were able to resolve it.
15 And if not, then you propose some -- you know, some
16 dates for supplemental briefing.

17 If there is this matter of incomplete
18 attorney's fees records for Mr. Kaufman, consider
19 whether you might either agree to a number or allow
20 me, if I end up having to decide an attorney's fees
21 motion, to try to triangulate that number based on
22 defense counsel's billing records, okay.

23 I mean, that's -- those are some of the
24 ways that you might try to -- want to try to work
25 this out. But I also do want to give you some time

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1 to cool down a little bit after the money's been
2 sent, after everything is said and done.

3 What I'm going to do is I am going to
4 provisionally docket the settlement agreement as a
5 sealed document. Judge Koeltl may have other ideas,
6 particularly because it's really not contributing
7 anything. It's not hiding anything other than
8 the -- you know, what's already out there and is not
9 going to be taken back. So I'm going to
10 provisionally docket it, but leave it up to Judge
11 Koeltl whether, you know, it should be public or
12 not, okay.

13 So I'll give Mr. McLellan his clean copy
14 of the February agreement back. And is there
15 anything else we need to do at this time?

16 MR. KAUFMAN: No. Although, certainly
17 (indiscernible) we can work it out now, it sounds
18 like if Your Honor is here and we can reach a
19 resolution, would we be able to bother you to put it
20 on the record and be finished if we are successful?

21 THE COURT: You know what you could do,
22 you could actually write it out and sign it all,
23 okay, and then give it -- and then leave it with my
24 clerk, or, you know, just e-mail chambers if you
25 can, or call chambers and let us know it's here,

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1 because I will not be able to physically be
2 available starting from about right now, okay.

3 MR. KAUFMAN: Thank you, Your Honor.

4 THE COURT: All right. No, thank you,
5 all, for your time. Thank you for coming in.

6 Anything else from defense counsel?

7 MR. McLELLAN: Not from me, Your Honor.

8 THE COURT: Okay. So how about -- let's
9 give you two weeks. That would be May 17th for --
10 I'll call it a joint status letter on the docket.
11 Joint status letter, May 17th on any outstanding
12 issues, okay.

13 MR. KAUFMAN: And will that date also be
14 put as a docket order?

15 THE COURT: Yes.

16 MR. KAUFMAN: Okay. Thank you.

17 THE COURT: Yeah. Okay. All right.
18 Thank you very much, everyone. All right. We are
19 adjourned.

20 Again, requesting the parties order a
21 copy of the transcript. Share the cost 50/50.

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C E R T I F I C A T E

I, Adrienne M. Mignano, certify that the foregoing transcript of proceedings in the case of Garmashov v. United States Parachute Association, Inc.; Docket #21CV4917 was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Adrienne M. Mignano
ADRIENNE M. MIGNANO, RPR

Date: May 19, 2023